

28 so as to be longitudinally displaceable toward and away from the stationary gantry as described, for example, at column 5, lines 1-12.

The Examiner characterized the Ivan et al reference as having an x-ray source 32 mounted "in the gantry," however this x-ray source 32 is clearly not mounted *in the gantry*, but is disposed outside of the gantry A, and is used to conduct fluoroscopic examinations in order to plan or augment a computed tomography scan conducted using the x-ray source that is actually in the gantry A. The x-ray source that is actually in the gantry A is the x-ray tube B, which can be seen in Figure 2. As described at column 4, lines 20-35, this x-ray tube B is rotatably mounted on a rotating frame member that is also referred to as a gantry C, however, since this gantry C is disposed inside the stationary gantry A, the gantry C is also stationary with respect to movement of the patient table into and out of the opening in the interior of the gantry C and the gantry A.

Moreover, the x-ray source 32 is mounted in various embodiments on a C-arm or on a ceiling mount, however, in all of these embodiments these different types of mounts are shown to be clearly distinct from the gantry A, and none of those mounts is ever referred to in Ivan et al reference as a "gantry," and the Applicant submits that those of ordinary skill in the art do not commonly refer to the types of mounts on which the x-ray source 32 is mounted as being a "gantry." The term "gantry" is used and understood by those of ordinary skill in the art as referring to the aforementioned type of structure referred to as the gantry A in the Ivan et al reference. Therefore, Applicants submit that in order for the x-ray source 32 cited by the Examiner to conform to language of claim 1 of the present application, it would be necessary to characterize the structure on which that x-ray source is mounted as being a "gantry," however, this

would be at odds with the normal usage of that term, as well as at odds with the meaning for that term understood by those of ordinary skill in the art.

Moreover, even if the structure on which the x-ray source 32 in Ivan et al is (incorrectly) interpreted as a "gantry" the x-ray source 32 still is not mounted "in said gantry" and movement of the gantry does not ensue into a "use position wherein said support plate extends through said measuring opening." Whatever characterization is given the structure on which the x-ray tube 32 is mounted, there is no mechanism disclosed in the Ivan et al reference which causes that structure to move into a use position wherein the support plate extends through the measuring opening. Movement of the support plate through the measuring opening in the Ivan et al structure ensues solely by longitudinal displacement of the support plate 28, and positioning of the x-ray source 32 has nothing whatsoever to do with whether the support plate 28 and/or the patient are in or out of the opening.

Claim 1 further requires that the support plate be non-displaceably mounted to the carrier, and this is additional claim language in claim 1 which is not satisfied by the Ivan et al reference.

The Ivan et al reference therefore does not anticipate claim 1 or any of the claims depending therefrom under the provisions of 35 U.S.C. §102(e), because the Ivan et al reference does not disclose all of the elements in claim 1 as arranged and operating in that claim.

Although a rejection was not made based on the Ivan et al reference under 35 U.S.C. §103(a), in view of the above discussion any modification of the Ivan et al reference to employ a true gantry which could be moved relative to a stationary support plate would be completely opposite to the intended operation of the Ivan et al reference.

Modifying a reference which destroys its intended manner of operation is not a permissible basis for supporting a rejection under 35 U.S.C. §103(a).

Similar considerations apply to the rejection based on Barth et al. The Barth et al reference also discloses the use of a C-arm mount for the x-ray source, and Applicants submit that this would not be considered by those of ordinary skill in the art to be comparable to a "gantry." Moreover, even if the C-arm is (erroneously) interpreted as being comparable to a "gantry," the Barth et al reference does not teach adjustment of such a "gantry" in the manner set forth in claim 1 since the only movement of the alleged "gantry" in the Barth et al reference relative to the support plate is a rotational movement. Thus, even if the C-arm arrangement disclosed in Barth et al can be said to have an examination "opening" therein, the only disclosed movement of the C-arm arrangement (i.e. rotational movement) has nothing to do with moving the alleged "gantry" to a use position wherein the support plate extends through such a measuring opening any movement of the alleged "gantry" in Barth et al ensues when the support plate is *already* in a "use position."

The Barth et al reference therefore does not anticipate claim 1, nor claim 3 depending therefrom, since the Barth et al reference does not disclose all of the elements of claim 1 (or claim 3) as arranged and operating in that claim.

Moreover, for reasons similar to those discussed above with regard to the Ivan et al reference, modifying the Barth et al structure to depart from any of the aforementioned structural features, so as to allegedly arrive at a structure comparable to claim 1 of the present application, would destroy the intended operation of the Barth et al reference, and would not be a permissible basis to support a rejection under 35 U.S.C. §103(a).

All claims of the application are therefore submitted to be in condition for allowance, and early reconsideration of the application is respectfully requested.

Submitted by,

*Steven H. Noll* (Reg. 28,982)

SCHIFF, HARDIN & WAITE

**CUSTOMER NO. 26574**

Patent Department

6600 Sears Tower

233 South Wacker Drive

Chicago, Illinois 60606

Telephone: 312/258-5790

Attorneys for Applicant(s).